

REMARKS

Claim 1 has been amended to state that device is for a naturally occurring tubular anatomical structure. Support for this can be found in paragraph 1. Accordingly, no new matter is involved. Claim 1 has also been amended to state that the means for locally dilating has a rounded non-traumatic tip. Support for this can be found in paragraph 72. Accordingly, no new matter is involved.

In the previous office action the Examiner rejected Applicants' claims under 35 USC 103 as being unpatentable over Kerr in view of Pena. Paragraph 13 of Kerr states:

"The present invention specifically addresses and alleviates the above-identified deficiencies. In this regard, the present invention is directed to a direct vision port site dissector operative to selectively and sequentially dissect or cut through tissue by a spreading action. Dissection by spreading of tissue under direct vision of a viewing device minimizes damage to tissue, vasculature and organs in a patient. The direct vision port site dissector may be used to selectively dissect or biopsy tissue or it may be used to position a port into a body cavity which may thereafter be utilized in a variety of surgical procedures and equipment placements." (emphasis added)

As seen from the figures of Kerr, the device disclosed therein is sharp and traumatic so as to dissect and cut tissue. Applicants' invention is designed to simply spread tissue apart in an already existing body cavity. Pena does not make up for this deficiency in Kerr. Applicants have made the above noted amendments to make the distinctions more clear. Consequently, Applicants respectfully request that the Examiner withdraw the 35 USC 103 rejections to Applicants claims.

Applicants submit that all claims are now fully allowable over the prior art cited by the Examiner. Therefore, Applicants respectfully request that the Examiner re-examine and favorably reconsider Applicants' claims in the form of a Notice of Allowance.

Respectfully submitted,

By: /Dean L. Garner/
Dean Garner, Esq. Reg. No. 35,877
Attorney for Applicant(s)

One Johnson & Johnson Plaza
New Brunswick, NJ 08933-7003
(513) 337-8559

Date: 14 April 2009